IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7145 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALSAD SARVAJANIK KELAVANI MANDAL

Versus

CONTROLLING AUTHORITY

Appearance:

1. Special Civil Application No. 7145 of 1999

MR HRIDAY BUCH for Petitioner No. 1

MS.FALGUNI PATEL, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1

MR PARESH UPADHYAY for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/04/2004

ORAL JUDGEMENT

Shri Valsad Sarvajanik Kelavani Mandal, a registered trust under the provisions of the Bombay Public Trust Act, 1952 has approached this Court with the prayer that the order at Annexure 'A' passed by the appellate authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "Act") in Gratuity Appeal No.4 of 1999 dated 09.08.1999 be quashed and set aside along with the order passed by the controlling authority under the Act in Gratuity Application No.P.G.A. / 90 of 1997 dated 07.12.1998. The controlling authority by its order dated 07.12.1998 was pleased to order that an amount of Rs.82,063.80 paise be paid as gratuity to respondent no.2 herein-teacher. The petition was filed on 17.09.1999. Thereafter, it was amended after the same was granted by this Court by its order dated 08.10.1999, whereby the averments were added by way of para 3.8, ground 4(f) and prayer clauses, paras 9(BB) nad 9(CC). The application, a copy of which is produced at Annexure 'F' was filed for grant of interest to the tune of Rs.37,318/-. It is prayed that the application at Annexure 'F' be quashed and set aside and the respondent authorities be restrained from initiating any further proceedings pursuant to the said application. This application was filed after passing of the orders at Annexures 'A' and 'B' praying for interest to the tune of Rs.37,318/-, and that is why the petition was required to be amended as aforesaid.

2. The learned advocate, Mr.Buch appearing for the petitioner submitted that the matter is covered by a Full Bench decision of this Court in the matter of Shantiben L. Christian Vs. Administrative Officer, Ahmedabad Municipal Board, reported in 2001 (2) GLR 1626, which was the subject matter of Civil Appeal No.6369 of 2001 before the Honourable the Apex Court, between Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and others, reported in (2004) 1 SCC 755, wherein the Honourable the Apex Court has approved the view taken by the Full Bench of this Court. Mr.Buch, the learned advocate submitted that as is held by the Full Bench, teachers are not included in the definition of the term, 'employee' as defined in clause (e) of section 2 of the Act and hence they are not entitled for payment of gratuity. Therefore, the orders of the controlling authority as well as that of the appellate authority are required to be quashed and set aside.

3. Mr.Paresh Upadhyay, the learned advocate appearing for respondent no.2-teacher submitted that the Government of India by issuing a notification dated 03.04.1997 has made the Act applicable to the educational

institutions. Therefore, it should be held that the teachers serving in educational institutions are entitled to get gratuity under the Act. The submission of Mr.Upadhyay, the learned advocate cannot be accepted for the simple reason that merely by making the Act applicable to educational institutions, teachers serving in the educational institutions ipso facto do not become entitled to receive the gratuity, more so in view of the judgement of the Full Bench of this Court, confirmed by the Honourable the Apex Court. There is no doubt that teachers do not fall within the term, 'employee' under the Act and hence not entitled to receive the gratuity.

4. Mr.Upadhyay, the learned advocate for respondent no.2 submitted that on the lines of the observations made by the Honourable the Apex Court in paras 25 & 26 of its judgement reported in (2004) 1 SCC 755 (supra) in this case also it may be observed that in case the legislature at a later point of time amends the definition of the term, 'employee' or by any any other mode extends benefits of the Act to teachers also, respondent no.2 may not be denied the said benefits only on account of the decision rendered in this petition.

5. For the reasons recorded by the Full Bench of this Court in the matter of Shantiben L. Christian (supra), as confirmed by the Honourable the Apex Court, this petition is allowed, the order dated 09.08.1999 passed by the appellate authority and order dated 07.12.1998 passed by the controlling authority under the Act are hereby quashed and set aside. Rule is made absolute. However, it is clarified that in case the benefit of Payment of Gratuity Act, 1972 is extended to other similarly situated persons, to that of the respondent teacher herein, decision in this petition should not constitute a bar in respondent no.2 getting the said benefits.

6. In view of quashing of the orders passed by the controlling authority as well as of the appellate authority the application filed by respondent no.2-teacher for interest, a copy of which is produced at Annexure 'F' does not survive.

7. Mr.Buch, the learned advocate for the petitioner submitted that after the controlling authority passed an order of payment of gratuity, the amount was deposited before the controlling authority and before the management could approach the appellate authority and obtain stay against disbursement of the same, respondent no.2-teacher obtained orders of disbursement and got the

said amount. He, therefore, requested that it may be clarified that it will be open for the petitioner management to recover that amount from respondent no.2. In view of the fact that the orders of the controlling authority and the appellate authority are quashed, as a natural consequence thereof, the amount which is paid to the teacher as a gratuity amount can always be recovered by the management, if it desires.

(Ravi R. Tripathi, J.)

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